

1 STATE OF TENNESSEE
2 DEPARTMENT OF COMMERCE & INSURANCE

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5 CONTRACTORS LICENSING BOARD

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10 Proceedings held on

11 March 29, 2009

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1 MS. DEBUSK: I call the meeting of the Board
2 of Licensing Contractor's to order, starting with a role
3 call to my left.

4 MR. OWENS: Earnest Owens, here.

5 MS. DEBUSK: Name your city as well.

6 MR. OWENS: Memphis, Tennessee.

7 MR. NEAL: Frank Neal, Nashville, Tennessee.

8 MS. DEBUSK: Cindi Debusk, Knoxville.

9 MR. WHITTINGTON: Keith Whittington, Johnson
10 City.

11 MR. TICKLE: Ronnie Tickle, Memphis,
12 Tennessee.

13 MR. BROOD: Mark Brood, Knoxville,
14 Tennessee.

15 MS. DEBUSK: Thank you. The next item on
16 the agenda is to review and adopt the agenda. If all of
17 you will look at it and...

18 MR. NEAL: I move the agenda be adopted.

19 MR. OWENS: Second.

20 MS. DEBUSK: All in favor say, aye.

21 (Board answers affirmatively.)

22 MS. DEBUSK: Opposed?

23 (No response.)

24 MS. DEBUSK: Motion carries. All right.

25 Tab -- the hardship approval, I think that's under tab

1 one. Do we have a motion to approve the hardship
2 license?

3 MR. WHITTINGTON: I make a motion we
4 approve all hardship licenses.

5 MR. TICKLE: Second.

6 MS. DEBUSK: All in favor?

7 (Board answers affirmatively.)

8 MS. DEBUSK: Tab two is the January 14th,
9 2009 conference call transcript. So you guys need to
10 review it and then we need to approve it.

11 (Board members review document.)

12 MR. NEAL: I make a motion that the January
13 14, 2009 conference call transcript be approved.

14 MR. TICKLE: Second.

15 MS. DEBUSK: All in favor say, aye.

16 (Board answers affirmatively.)

17 MS. DEBUSK: Okay. Tab three, January 20th
18 2009 board meeting transcript. You need to review and
19 approve it.

20 (Board members review document.)

21 MS. DEBUSK: The minutes were sent
22 electronic mail a couple of weeks ago.

23 MR. NEAL: Make a motion that the
24 January 20th, 2009 board meeting transcript be approved.

25 MR. WHITTINGTON: Second.

1 MS. DEBUSK: Do we have any corrections?

2 MR. NEAL: I didn't see --

3 MS. DEBUSK: Discussion?

4 (No response.)

5 MS. DEBUSK: All in favor say, aye.

6 (Board answers affirmatively.)

7 MS. DEBUSK: Okay. Consent has it. All
8 right. Tab four, we have the interviewed and waived
9 applicants. These are ones that you interviewed today
10 or the waived applicants that were done prior to the
11 board meeting. You need to review the list and approve
12 the interviewed applicants and the waived applicants.

13 MR. NEAL: Madam Chairman, I have one for
14 discussion.

15 MS. DEBUSK: Okay.

16 MR. NEAL: This is a waived applicant file,
17 it's in order. And the request for it to be waived has
18 been done, but since the waiving occurred there was a
19 complaint filed in connection with this applicant's
20 license. The complaint alleges unlicensed activity, but
21 this is a roof project. And the man in question was
22 considerably less than \$25,000 requiring a license.

23 The owners of the company came in for an
24 interview and explained the situation, and I'll briefly
25 pass that on for your consideration. They reviewed a

1 hail damage claim for a home owner, but the review was
2 made in connection with the insurance claims adjustor on
3 site and the adjustor supplied an estimate for the
4 damages that they were willing to pay the home owner for
5 these items. And the contractor in question agreed to
6 make the repairs for the amount that the insurance
7 company was willing to pay. They entered into a
8 contract with an owner of -- that basically said that
9 they would receive 20 percent of the insurance proceeds,
10 regardless of whether or not they performed the work
11 because they did work with the insurance company and the
12 adjustor and reviewed his estimate. And that initially
13 was perfectly agreeable.

14 However, the owner now decides that he wants
15 to take the insurance money and may or may not desire to
16 make the repairs. The applicant for the license had
17 secured or has secured an attorney and there is a letter
18 in the file that was written by their attorney to the
19 home owner pointing out his requirement to fulfill the
20 portion of the contract that he agreed to, even though
21 they did not do the work. They were happy to do the
22 work, but the occupier has decided he doesn't want them
23 to do that work.

24 That being said, I do not feel that the
25 contractor has violated any of our laws and particularly

1 due in fact that it's under the \$25,000 limit. I see no
2 reason to hold his license with the information that's
3 been submitted in connection with this. It appears as
4 though there is an effort on the part of the owner to
5 retain the insurance proceeds and these people are
6 adamant -- in fact, I advised them not being their
7 attorney, that may be the easiest thing to do would be
8 to just go away and forget this. And they weren't
9 agreeable to that at all, because they feel confident
10 that this homeowner is trying to perpetrate a fraud
11 against the insurance company by taking moneys and not
12 repairing the damages.

13 So that said, I would entertain any
14 questions that any board member would have. But other
15 than that my recommendation would be that their request
16 for their license be issued, in spite of the fact that
17 this complaint has been filed.

18 MR. WHITTINGTON: Is that a motion?

19 MR. NEAL: Be glad to make it that.

20 MR. WHITTINGTON: Or do we do it all as one
21 group?

22 MR. NEAL: Well, we can do this one and then
23 we can do all the rest of them.

24 MR. WHITTINGTON: I second the motion then.

25 MS. DEBUSK: Discussion?

1 MR. BROOD: Was the complaint filed by the
2 homeowner?

3 MR. NEAL: Yes.

4 MR. BROOD: Okay.

5 MR. NEAL: I don't actually see any evidence
6 of the complaint, but it's on this CNI regulatory board
7 note. Was it a call-in or...

8 MS. ROBERTS: I'd have to look at the RA.
9 That's a summary of allegation.

10 MS. DEBUSK: Are there other questions for
11 Mr. Neal?

12 (No response.)

13 MS. DEBUSK: Okay. All in favor?

14 (Board answers affirmatively.)

15 MS. DEBUSK: Opposed?

16 (No response.)

17 MS. DEBUSK: Motion carries.

18 MR. NEAL: Okay. Thank you.

19 MS. DEBUSK: Okay. Do we have others for
20 the interviewed/waived applicants?

21 (No response.)

22 MS. LAZENBY: Were there any applications
23 held?

24 MR. OWENS: I had three that was held
25 pending insurance certificates.

1 MS. LAZENBY: Okay.

2 MR. WHITTINGTON: Madam Chairman, can I ask
3 a question?

4 MS. DEBUSK: Sure.

5 MR. WHITTINGTON: We've got some of the
6 waived files that have not been reviewed. We also have
7 some of the increases that have not been reviewed.
8 Would it be proper at this time that we recess for 20
9 minutes --

10 MS. LAZENBY: Yes.

11 MR. WHITTINGTON: -- in order for the Board
12 to finish these files up because we can't carry a vote
13 out.

14 MS. LAZENBY: That's right.

15 MS. DEBUSK: So we go into recess. Do we
16 have to vote to go into recess?

17 MR. WHITTINGTON: I don't believe so.

18 MS. DEBUSK: Okay.

19 MR. WHITTINGTON: I think you can just call
20 a recess.

21 MS. DEBUSK: I call a recess.

22 (WHEREUPON, a short recess was had and
23 the proceedings continued as follows:)

24 MS. DEBUSK: Okay. I'd like to reconvene.

25 The Licensing Board meeting is back into session. All

1 right. We left off the with the interviewed/waived
2 applicants.

3 MR. WHITTINGTON: I've got a couple that I
4 need to bring up before we completely pass on. One is
5 on your waived interview, is it JL Husbee & Company, LLC
6 -- and I just want to make sure I get the Board's
7 approval. They've already got one license and they're
8 requesting a second license. And I have asked for a
9 letter to explain the need for the second license before
10 we can approve it. The other is Brando Construction LLC
11 --

12 MR. NEAL: These are not on the list.

13 MR. OWENS: These are ones that you had
14 back.

15 MR. WHITTINGTON: This JL Husbee may be one
16 they just tried to get through this morning. I don't
17 know. It may have come in the last day or so.

18 MS. DEBUSK: It's LJ.

19 MR. WHITTINGTON: LJ. Yeah, there it is.
20 It's on the list. Grand Oak didn't have worker's comp.
21 There QA is not an officer of the company, so I've asked
22 for them to obtain and send us proof of worker's comp.
23 And then the Other Side of the Fence, incorporated, I
24 wanted to call them in for an interview because their
25 corporate structure isn't exactly what I think it needs

1 to be with two partners being at zero percent ownership,
2 yet they have no worker's comp. And they may have
3 contracted without a license. So I want to ask that
4 those people come in and talk to us as well.

5 And with that, I'll make a motion that we
6 approve all the waived interviews and all the scheduled
7 interviews.

8 MS. DEBUSK: Well, I think we need to
9 approve your -- I think we need to make a motion and do
10 your three.

11 MR. TICKLE: You want to hold your three --

12 MS. DEBUSK: Do you want to hold your three
13 'til the end?

14 MR. WHITTINGTON: Well, I can make a motion
15 that -- you know, that these are held pending resolution
16 of the problems I have with...

17 MS. DEBUSK: Okay.

18 MR. NEAL: Second.

19 MS. DEBUSK: All in favor say, aye,

20 (Board answers affirmatively.)

21 MS. DEBUSK: Opposed?

22 (No response.)

23 MS. DEBUSK: Motion carries. Okay. Do we
24 have others that we need to discuss individually before
25 we move on to approving globally the interview/waived

1 applicants?

2 MR. NEAL: None other than the fact that I
3 had three approved pending insurance.

4 MS. DEBUSK: Okay.

5 MR. OWENS: I can give you the numbers if
6 you would need them.

7 MS. LAZENBY: They were revisions from --

8 MR. OWENS: Yeah.

9 MS. LAZENBY: So we don't have to do those
10 as part of the waived interviews.

11 MS. DEBUSK: Okay.

12 MR. NEAL: That said, I'd make a motion that
13 the interview and waived applicants be approved.

14 MR. BROOD: Second.

15 MS. DEBUSK: All in favor, aye.

16 (Board answers affirmatively.)

17 MS. DEBUSK: Opposed?

18 (No response.)

19 MS. DEBUSK: Motion carries. Revisions. I
20 think, Ernest, you have three under the revisions?

21 MS. LAZENBY: We're under tab five under
22 revisions?

23 MR. WHITTINGTON: Yes.

24 MS. LAZENBY: If you want to you can just
25 call out the license number.

1 MR. OWENS: The license number on the first
2 one is 29067. The second one is 46116, and the third
3 one is 58793.

4 MS. DEBUSK: Are you making a motion in the
5 form of a motion?

6 MR. OWENS: Yes. That needs to be approved
7 pending we get the right insurance.

8 MS. DEBUSK: Okay.

9 MR. BROOD: I had some in that same category
10 that I just noted that I'd approve them when they submit
11 insurance. I don't have the numbers, but there is
12 probably half a dozen of them.

13 MS. DEBUSK: Okay. So do we have a second
14 to Earnest's motion under the three he mentioned? Do we
15 have a second?

16 MR. BROOD: I'll second.

17 MS. DEBUSK: All in favor say, aye.

18 (Board answers affirmatively.)

19 MS. DEBUSK: Opposed?

20 (No response.)

21 MS. DEBUSK: Motion carries. Behind tab
22 six, the LLE applicants. The first one, license number
23 59871 under list. Not approving this gentleman based on
24 he's -- he's on probation in 2023 for burglary, assault,
25 kidnapping. That aside, then a family dispute and

1 additional charges for the family dispute. So I'm not
2 approving him. All others on the list are approved. So
3 I make that in the form of a motion.

4 MR. NEAL: Second motion.

5 MS. DEBUSK: Do we have any discussion?

6 MR. NEAL: The only question I'd ask, what
7 about this second one down there. He had a felony also,
8 but it was --

9 MS. DEBUSK: He did and after reviewing his
10 file it's okay. I agreed to approval. Other
11 discussion?

12 (No response.)

13 MS. DEBUSK: All in favor, aye.

14 (Board answers affirmatively.)

15 MS. DEBUSK: Opposed?

16 (No response.)

17 MS. DEBUSK: Okay. Now, we have two
18 additional applicants that's not on our list for LLE's.
19 And file number 5921 and file number 6008 I am not
20 approving due to felonies. The first one is due to
21 sexual assault on a minor and still on probation. And
22 the second one, he's denied, 'cause I need an
23 explanation of who, what, when, where and why as to what
24 his felony is about. So I'm making a motion that -- not
25 to approve the two members I just mentioned.

1 MR. NEAL: Second the motion.

2 MS. DEBUSK: Do we have any discussion about
3 the two or the reason why?

4 (No response.)

5 MS. DEBUSK: All in favor, aye.

6 (Board answers affirmatively.)

7 MS. DEBUSK: Opposed?

8 (No response.)

9 MS. DEBUSK: Motion carries. Okay. And tab
10 seven, home improvement. Oh, that's the -- the two I
11 had was home improvement under tab seven.

12 Okay. I'll turn it over to Michael Driver,
13 our legal counsel for the Board.

14 MR. DRIVER: Thank you. Madam Chair, I
15 believe about half of the residential subcommittee cases
16 were not able to be reviewed by one of the subcommittee
17 members. I believe numbers 1 through 37 were reviewed
18 and there was suggested -- some suggested amendments
19 there too. I'm not sure how you want to handle that, if
20 you want to go through the suggested amendments on the
21 first 37 and go through the individual numbers or if the
22 board members would like to review number 38 through the
23 end.

24 MS. DEBUSK: Okay.

25 MR. DRIVER: And the commercial report was

1 reviewed.

2 MS. DEBUSK: Okay. So let's talk about 1
3 through 37.

4 MR. DRIVER: Okay.

5 MS. DEBUSK: And then 38 through -- and we
6 will spend a few minutes -- have each one take five or
7 six -- well, we'll do that in a minute. Let's do 1
8 through 37 first.

9 MR. DRIVER: And I didn't have -- and again,
10 the time constraints. I think, there were a great many
11 of files to review at the beginning of this meeting. I
12 did not have an opportunity to go through with
13 Mr. Tickle as to what changes he had recommended, so if
14 he would be so kind. It may be faster if he goes
15 through his recommended changes on the report since we
16 didn't get to go through all of those together, if
17 that's okay.

18 MR. TICKLE: That's fine.

19 MR. DRIVER: Okay.

20 MR. TICKLE: Number four, if ya'll will read
21 that. The recommendation was for a \$1,000 fine up to
22 about 2,000. Read it and see what ya'll think.

23 (Board reviews document.)

24 MR. NEAL: Question I would have is how are
25 we going to have a formal hearing for somebody that

1 doesn't have a license?

2 MR. DRIVER: The law gives jurisdiction over
3 persons who are unlicensed who are acting as a
4 contractor without a license. The Board can only issue
5 civil penalties in that case, but it is perfectly doable
6 to have a formal hearing for someone who doesn't have a
7 license. It's just that same as a regular formal
8 hearing, it's a matter of getting service and going
9 ahead with the hearing in that case.

10 MS. LAZENBY: And after you have a formal
11 hearing, if they do not pay it can be turned over to a
12 collection agency.

13 MR. NEAL: I'll go along on the
14 recommendation of \$2,000.

15 MR. TICKLE: And then the next one is number
16 five. Everybody read that and we'll kind of discuss
17 that and that should be okay.

18 MR. DRIVER: And I guess I'll step in here
19 since the discussion was my recommendation. Basically
20 what happened here, this is one of those cases, as it
21 says, the home was supposed to be completed in five to
22 six months. After nine months the home owner says, I
23 don't like what you're doing. I don't like how long
24 it's taking. Get off the job. There are problems
25 according to the information that I received with the

1 home. However, there doesn't appear to be any contest
2 that the response was terminated -- the contractor was
3 terminated prior to being able to complete the home.
4 That license is still going at this time. So that
5 contract, or at least as of right now, is no longer a
6 licensee. Of course they do still have about six months
7 to review that license.

8 MR. TICKLE: That may be one of those that
9 you flag when it comes through. Like --

10 MR. DRIVER: Yeah.

11 MR. TICKLE: -- get some recommendations to
12 clarify whether or not he had some bad workmanship or
13 something like that. Just flag it and put it in review
14 and that would be a complaint against him where you
15 would look at.

16 MR. DRIVER: Yeah. I mean, we can certainly
17 do that, put it in the RBS system that if they renewed
18 their license the complaint will be reopened. And if
19 they're not and they don't renew within the next six
20 months, they won't have any ability to renew their
21 license. They have to apply for a new license after
22 that.

23 MR. TICKLE: Is that okay with everybody?
24 Flagging it?

25 (Board members nod head affirmatively.)

1 MR. TICKLE: And then number seven, the
2 recommendation which says to give a letter of warning,
3 this was bad. If you're not going to revoke somebody's
4 license, that's the whole point of being a licensed
5 contractor. I think that some type of fine needs to be
6 levied against the person that lets somebody else use
7 their license. I'm not sure that's grounds to pull a
8 guy's license and, you know, fine him and give him a
9 letter of, you know, don't do that again, or it's very
10 possible you may not have a license.

11 MR. DRIVER: Yeah. And I believe the
12 recommendation we discussed, Mr. Tickle, suggested
13 changing it to a fine of \$1,000 as to the license and
14 that he enclose to the subsidiary since it's just a ploy
15 on some city area license identify.

16 MR. TICKLE: And the next one is number 11.
17 If ya'll will read that and us discuss it, that will
18 that be okay.

19 MR. BROOD: Which number we on?

20 MR. TICKLE: Number 11.

21 MR. BROOD: Yeah, 38711.

22 MR. TICKLE: And again, I believe the
23 recommendation on this had been changed to -- after
24 discussion, authorizing formal hearing on this matter
25 with authority to settle for payment of the citation

1 that is outstanding on it.

2 MR. TICKLE: I agree with that. And then on
3 number 12, if you will read that also.

4 MR. DRIVER: And where it says Board Member
5 review, what I believe we had suggested doing in this
6 case was to have one of the board members --
7 Mr. Whittington's name had come up in conversation
8 between Ms. Lazenby and myself. At the discretion of
9 the Board to look through the file and then if formal
10 proceedings are initiated, then whoever would have
11 reviewed the file would then recuse themselves from
12 formal proceedings. But in the interim would be able to
13 make a suggestion to the Board after reviewing the
14 entirety of the file.

15 MR. TICKLE: My question to the respondent,
16 did you receive any money at the time of this lapse. It
17 was kind-of the one guy complaint against another guy.
18 That would be something for you to look at.

19 MR. WHITTINGTON: Number 12?

20 MR. TICKLE: Uh-huh. And then number 15,
21 recommendation was to close it, but I said the
22 respondent should be fined. Ya'll were looking at that
23 again, allowing somebody to use their license.

24 MR. DRIVER: And to explain that -- and I
25 may have worded it poorly, what happened in this file is

1 there was a complaint that the respondent had an
2 unlicensed entity that used his license. What the
3 investigation showed happened was that the respondent,
4 who is a licensee, had been initially contracted to do
5 this work and then actually did act in that capacity
6 until a disagreement arose and then they withdrew, and I
7 believe canceled the permit on the job at that time.
8 And that's why the recommendation was to close on that
9 one.

10 MR. TICKLE: I don't have a problem with it
11 then how you explained it.

12 MR. DRIVER: Okay. And I apologize for
13 confusion, poorly wording things there.

14 MR. TICKLE: And then number 18, if ya'll
15 will read that one. I think the fine ought to be about
16 \$3,500 and suspend this guy for 45 days if he doesn't
17 pay the fine.

18 MR. DRIVER: And --

19 MR. TICKLE: I don't know if we can do that,
20 but that's just -- that's my recommendation.

21 MR. DRIVER: And certainly as I mentioned --
22 and the Board has already authorized a \$2,500 consent
23 order, the reason why the offer to -- or the suggestion
24 to lower it to \$1,000 was mentioned is from review. And
25 it appears that on the citation, the pay-by-day wasn't

1 filled in, but it is listed on there the number of days
2 they have and they know when they got it. So I'm not
3 sure that's necessarily a good reason to do it. I'm
4 perfectly fine leaving the 2,5000 on there, but the
5 offer was made from the respondent to pay the \$1,000
6 citation and move up to a formal hearing. So I wanted
7 to present that to the Board.

8 MT. TICKLE: Frank, look at that 18 and see
9 what you think?

10 MR. NEAL: I say if he pays \$2,500 -- he
11 could have saved \$1,500 if he'd paid it on time. But I
12 mean, otherwise just tell him that we moved it to a
13 formal and take his license away from him.

14 MR. TICKLE: I agree.

15 MR. DRIVER: Any other thoughts?

16 (No response.)

17 MR. DRIVER: Then the legal's
18 recommendation, respectfully, is we're leaving that one
19 as it was previously authorized, which is a \$2,500
20 consent order.

21 MR. TICKLE: In number three, for some
22 reason, I said don't find the respondent. I ought to
23 read that again. I don't usually --

24 MR. DRIVER: There was -- this one was--
25 one of those, I guess, a lot of he said, she said case.

1 There was some question as to the framing was poorly
2 done. The respondent, who's a license contractor said,
3 look, I told the complainant in this case, the home
4 buyer, that this framing wasn't done yet and then they
5 had someone come out and do an inspection. And there's
6 essentially a war of words as to who is telling the
7 truth in this matter.

8 And there was -- also, I think the fine was
9 more based off the fact of that the complainant, who
10 again was the home owner, had told this contractor to
11 use scrap wood in part of the construction -- part of
12 the framing of the home. And, you know, the respondent
13 said, well, that's what the complainant told me to do.
14 And in a lot of ways that -- and that seems to be the
15 general agreement, but I think if you're putting up --
16 and obviously I'm not a contractor, but obviously if
17 you're putting the frame of a home and someone tells you
18 to do something that doesn't seem -- to me putting up
19 scrap wood in the frame of a home does not seem like an
20 acceptable practice, even if your client tells you to do
21 it. But that's probably better left to your discretion
22 than to mine.

23 MR. TICKLE: Well, there is a definition of
24 what's scrap wood and what isn't. Most everything on
25 the job could be used.

1 MR. DRIVER: Right.

2 MR. TICKLE: And so what they're saying in
3 fine line is I think look towards the contractor 'cause
4 he has to do what the person who he is contracted tells
5 him to do.

6 MR. DRIVER: Right.

7 MR. TICKLE: If it's wrong then he states it
8 and he also puts it in writing also. I don't know if he
9 did or not.

10 MR. DRIVER: And I don't know if that advice
11 was given in writing, but I don't think there is any
12 real contest that that is what happened. So you would
13 like to suggest that we change the --

14 MR. TICKLE: I say no fine for the
15 respondent -- for the contractor at all in this right
16 here because he was following instructions, the way it
17 sounds to me what they've said.

18 MR. DRIVER: Any other members have any
19 thoughts on that one?

20 MR. OWENS: Do they have to pass a framing
21 inspection or don't they have to? And I don't know what
22 county that's in.

23 MR. DRIVER: They did. And part of the
24 problem was that the complainant, the home buyer,
25 requested the inspector to come out and the respondent

1 told this home buyer, this thing's not ready to be
2 inspected yet. And then it failed the inspection
3 because it had not been completed.

4 MR. TICKLE: The inspector didn't have any
5 business on the job site. The contractor didn't ask for
6 it and I know in Shelby County the contractor has to ask
7 for it. The home owner can't, but depending where --
8 what county it was, they had somebody come out and look.
9 That's why I don't think the contractor's at fault. He
10 didn't ask for it. Now, if he had asked for it then
11 failed, then yes, he'd be responsible for it. But in
12 this case he didn't ask for an inspection, just appeared
13 on the job. So I think --

14 MR. OWENS: But was it ever inspected in the
15 past?

16 MR. DRIVER: I believe --

17 MR. OWENS: At some point the builder had to
18 have it inspected.

19 MR. DRIVER: Again, this contractor was
20 taken off the job at that point, so I don't believe they
21 had a chance to rectify the situation. And I honestly
22 don't know what happened after the events that give rise
23 to the complaint, but I don't believe that work was
24 completed by this respondent if it was later completed.
25 So Legal would change it's recommendation on that one to

1 close the file.

2 MR. TICKLE: Right, and no fine. And then
3 number 29, my question was on this, what was
4 respondent's monetary limits on this property? We find
5 him in \$500, but what was his -- do you know?

6 MR. DRIVER: We're going to get the file. I
7 don't have that. I believe that if I'm thinking right
8 that this respondent was not licensed and this is an
9 unlicensed activity and that's -- what they did was they
10 did one contract for the framing and the other was for
11 the rest of the construction of the barn. And the two
12 contracts combined, which seemed to me to be clearly one
13 project, that is the construction of a barn were split
14 up so to stay under the \$500. So I believe this is not
15 a licensee we're talking about.

16 MR. TICKLE: And then the last one is number
17 35 -- I'm sorry, 36, and I recommended that we increase
18 that fine to about \$5,000. All the way off of half a
19 million dollar house, not following through with what he
20 should have done and he should have known better.

21 MR. DRIVER: Legal would recommend that that
22 recommendation be accepted and \$5,000 be the
23 recommendation on this civil penalty on the consent
24 order.

25 MR. TICKLE: And that's as far as I went.

1 MR. DRIVER: I was going to say, and
2 starting at 38 --

3 MR. WHITTINGTON: Yeah, I can start at 38 --

4 MR. NEAL: Was that last \$5,000 on 36?

5 MR. DRIVER: Yes. 5,000 on 36 instead of
6 1,000.

7 MS. DEBUSK: Okay. What I'd like to do is
8 to assign a range to each member and we look -- do the
9 range and then talk about each one individually. If
10 that's okay?

11 MR. DRIVER: That's fine. That's usually
12 what we do at the beginning of the meeting. I think
13 that were -- there were more files perhaps than usual to
14 be reviewed and so --

15 MR. WHITTINGTON: I've already done that.
16 So that's what I was trying to -- so that's what I was
17 trying to get to.

18 MS. DEBUSK: All right. So Mr. Whittington
19 is going to speak on 38 through 59.

20 MR. WHITTINGTON: Somebody else wants to
21 look at 59 through 84 or whatever it was, 70 something.

22 MR. DEBUSK: Okay. We'll assign them. Mr.
23 Owens, if you'll take 60 through 65. Mr. Neal, 66
24 through 70.

25 MR. NEAL: Okay.

1 MS. DEBUSK: Mr. Brood, if you'll take 71
2 through 75. I thought we go through 84?

3 MR. WHITTINGTON: No, those are commercial.

4 MR. DRIVER: Mr. Brood has already reviewed
5 the commercial files, I do have those --

6 MS. DEBUSK: Okay.

7 MR. DRIVER: -- recommendations.

8 MR. WHITTINGTON: Residential only goes
9 through 75.

10 MS. DEBUSK: That's what -- okay.

11 MR. WHITTINGTON: On item number 38 I agree
12 with your decision. Item number 39 -- item number 40,
13 the complainant alleges five separate counts of
14 unlicensed conduct. The respondent was issued five
15 citations and a total of 5,000 each or 5,000 --

16 MR. DRIVER: Total. 1,000 per citation.

17 MR. WHITTINGTON: And has not paid any of
18 them?

19 MR. DRIVER: That's correct.

20 MR. WHITTINGTON: Yeah. Let's get him.
21 That's what you're recommending; right?

22 MR. DRIVER: Yes. I'll go ahead and
23 authorize a formal hearing on that.

24 MR. WHITTINGTON: Number 41, you've got not
25 less than 500. I say not less than 1,000.

1 MR. DRIVER: Okay. We'll make that change
2 to this report. Changing 41 to civil penalty not less
3 than 1,000.

4 MR. WHITTINGTON: Number 42, no need to
5 discuss that. Can you elaborate a little bit on this?

6 MR. DRIVER: I can try. This is another
7 one, again, there is a lot of going back and forth on
8 it. This home was started in August of 2002 and the
9 complainant was supplied blueprints. I do believe there
10 was some bickering back and forth to the actual
11 blueprints. And basically how it turns out -- and there
12 is again, some complaint as to that he abandoned the job
13 and he says that he was not allowed back on the job. It
14 does appear an inspection and investigation that there
15 was some workmanship issues with the work that had been
16 done and that is what the \$500 is based on.

17 MR. WHITTINGTON: This house started in '02?

18 MR. DRIVER: In '02.

19 MR. WHITTINGTON: And this is '09.

20 MR. DRIVER: And the complaint was filed in
21 '07.

22 MR. WHITTINGTON: The complaint was filed
23 five years later?

24 MR. DRIVER: Five years, yes, sir.

25 MR. WHITTINGTON: Is there any reason that

1 it took them so long for them to file the complaint?

2 MR. DRIVER: If you want to move on, he's
3 going to get the file and I'll be able to better answer
4 questions on that one, if that's okay?

5 MR. WHITTINGTON: That is okay. Number 43
6 is okay. 44, 45, 46 -- up to item number 49, your
7 recommendation is a review by a board member?

8 MR. DRIVER: Yes, sir.

9 MR. WHITTINGTON: We do need to review this.
10 However, I'm going to request that it's not me because I
11 think that happened in my area and I'm very aware of the
12 circumstances.

13 MR. DRIVER: I understand.

14 MR. WHITTINGTON: I would suggest that
15 Ronnie Tickle be appointed or assigned in this case to
16 review, as he is a residential member.

17 MR. DRIVER: Okay. Then Legal will accept
18 that recommendation for Mr. Tickle to review that
19 matter.

20 MR. WHITTINGTON: Number 52, I just really
21 have a hard time following this. It seems like we've
22 had an agreement to start work and the complainant
23 changed the plans.

24 MR. DRIVER: Basically what happened, the
25 complainant had the contractor come out in 2006, showed

1 them the old garage and said I want a new garage built.
2 They agreed to the estimate, the complainant then made
3 changes, they worked up a draw schedule, signed the
4 contract. The complainant said, I'll get you new
5 drawings. Allegedly, they were done by the
6 complainant's friend and respondent said those aren't
7 acceptable drawings for what you're asking me to do.

8 And the main problem is that there was a
9 crack that developed in the foundation, but the
10 respondent says the complainant had the permit canceled.
11 There is a letter from the local codes office showing
12 that by their measurement the foundation was too shallow
13 for the height of the building. The respondent said
14 that depends on how you measure the building and said by
15 my measurements it's fine.

16 Perhaps the more interesting, I guess, is
17 that, you know, on the second complaint in December of
18 2006 they entered into a contract to build a screened in
19 porch over half a year later they hadn't even begun work
20 on that and I think that may be the more troublesome of
21 the two than the first one. Although it does appear
22 from the local codes that the foundation was not
23 sufficient for the garage that was built.

24 MR. WHITTINGTON: Has the respondent not, as
25 of yet, finished this screened in porch or --

1 MR. DRIVER: We have no information --

2 MR. WHITTINGTON: -- no progress.

3 MR. DRIVER: -- no information in the file
4 that would led me to believe any progress has been made.

5 MR. WHITTINGTON: We're still talking about
6 nearly two years ago.

7 MR. DRIVER: Right.

8 MR. WHITTINGTON: And we're talking about
9 fining a guy \$2,000 that we don't know he finished the
10 work. I'm going to have to make a motion that we get
11 more information. Is that appropriate or does anybody
12 agree with me?

13 MR. DRIVER: I'll be more than be happy to
14 get more information on it. Specifically you want an
15 update about the porch?

16 MR. WHITTINGTON: I want to know --

17 MS. DEBUSK: The recommendation of 2,000 is
18 not enough or too much?

19 MR. WHITTINGTON: I don't know. I can't
20 make a decision. If he didn't finish the work and he
21 put in an improper footing and he abandoned the job,
22 then I'm going to fine him 5,000. But if he's -- as of
23 today they're best friends and all the work is done, why
24 should we fine the fellow?

25 MR. DRIVER: Absolutely. And I'll check.

1 Again, the foundation issue comes down to the respondent
2 saying, by my measurement it's fine. The code says by
3 our measurements it's not. But the porch, I'll get
4 additional information and it will be represented at the
5 next meeting.

6 MR. TICKLE: Okay. That would be good.

7 MR. DRIVER: Legal will change it's
8 recommendation to more information on that.

9 MR. TICKLE: I would suggest the respondent
10 get him an engineer to back him up, if in fact he thinks
11 he is right. Code enforcement has the authority over
12 us, no matter what we think if they're right or wrong
13 and the only way we can have a way to come about him is
14 to have a engineer to support him.

15 MR. WHITTINGTON: It'd going to be kind of
16 hard for us to find a builder with, like Ronnie says, no
17 engineer statement. If you've got that that would be
18 real good, but you know, just because he said, she said
19 -- and concrete cracks all the time.

20 MR. DRIVER: And again, the recommendation
21 was more based on, to my information, they had entered
22 into a contract and hadn't even started work for -- I
23 mean, a long enough period of time that the complainant
24 decided to file a complaint with this board and less so
25 with the foundation.

1 MR. WHITTINGTON: Did they not pay him
2 anything?

3 MR. DRIVER: I believe so. And again, I'm
4 going to put that on the next report.

5 MR. WHITTINGTON: Very good. On up to item
6 number 55, complainant alleges in 2005 the complainants
7 entered into a verbal contract. Well, that was the
8 complainant's first mistake. You've got the
9 recommendation to discuss. Is the respondent a licensed
10 state contractor?

11 MR. DRIVER: Yes. Respondent's -- it says I
12 think on the second line -- at the end of the second
13 line and beginning of the third, \$400,000 limit.
14 However -- yeah. Yeah. So...

15 MR. WHITTINGTON: So we don't know if the
16 complainant got mad just because he does himself a favor
17 and got this guy to agree to build his house for --
18 well, cash and now he's mad because it cost him a little
19 bit more than what he thought.

20 MR. DRIVER: Well, and I guess what part of
21 the issue is, it's someone with a \$400,000 license and
22 this house has cost, so far, over one and a half
23 million. Of course, what the respondent says what
24 happened is there was this initial contract for me to do
25 part of it. We had no inkling of doing any other part

1 of this. And then the Complainant said, hey, why don't
2 you do this and they entered into a verbal contract for
3 that additional part. And then the complainant was
4 pleased with that part and they kept doing this. This
5 may be a file that's good for review.

6 MR. WHITTINGTON: I think what we need to do
7 is --

8 MR. DRIVER: Or an informal conference.

9 MR. WHITTINGTON: -- is call the contractor
10 in for an informal, prepare a consent order for him to
11 sign for -- because to start with, he has started a
12 project that was obviously over his license limit. He
13 knew that it would be over his license limit when he
14 started it. They together conceived the plan that would
15 stay under his license limit and now the complainant is
16 mad -- that's the complaint's problem, that it cost more
17 than he thought it would.

18 MR. DRIVER: Right.

19 MR. WHITTINGTON: That's my view of that,
20 but the contractor should have known that he was going
21 to exceed his license. So I would recommend that we do
22 a consent order for \$5,000.

23 MR. DRIVER: Well, did you want to do the
24 informal conference and let someone talk and discuss
25 this matter before we do a consent order?

1 MR. WHITTINGTON: No. After I thought about
2 it, I think he already knew. Let's just do a consent
3 order.

4 MR. DRIVER: Okay. Legal's recommendation
5 would be a formal hearing authorizing a consent order
6 not less than \$5,000.

7 MR. WHITTINGTON: The next one I have a
8 question about. It's number 58, on that consent order.

9 MR. DRIVER: Yes, sir.

10 MR. WHITTINGTON: Do it for 5,000 --

11 MR. DRIVER: Okay.

12 MR. WHITTINGTON: -- is my recommendation.
13 And that's all I have. Somebody with 60?

14 MS. DEBUSK: Mr. Owens?

15 MR. OWENS: Number 60, where an LLE let
16 someone use his license to pull a permit and further
17 admit that he had to work and -- well, for \$5,000 and
18 \$500 s and stated that no further work be done. So I'm
19 recommending a fine because he should have known better.
20 A fine of maybe \$200? \$500?

21 MR. WHITTINGTON: I think we have to go a
22 minimum of 250.

23 MS. LAZENBY: For LLE, I think it can start
24 --

25 MR. DRIVER: It's \$50.

1 MR. OWENS: 'Cause if he's -- if he's doing
2 work for \$500, apparently he doesn't have a lot of
3 money. So \$500 may put him in bankruptcy, so I'm
4 recommending 250.

5 MR. DRIVER: Okay. Anyone else have any
6 thoughts on that one?

7 MR. WHITTINGTON: I agree with Earnest.

8 MS. DEBUSK: I disagree.

9 MR. WHITTINGTON: Let us know.

10 MS. DEBUSK: Oh, I think it should be 500.

11 MR. OWENS: Well, I'll change my
12 recommendation to 500.

13 MR. NEAL: You're too easy, Earnest.

14 MR. WHITTINGTON: Considering she's the
15 electrical member, she knows.

16 MS. LAZENBY: We can put him on a payment
17 plan.

18 MR. OWENS: You can?

19 MR. DRIVER: Okay. Well, Legal will change
20 the recommendation on number 60 to a formal hearing with
21 authority to settle with consent for not less than \$500.

22 MS. LAZENBY: Is that for the guy --

23 MR. DRIVER: That is the person who used,
24 yes.

25 MS. LAZENBY: Okay. Now, what about the

1 person that allowed someone else to use --

2 MR. DRIVER: There was no information that
3 that person had any involvement in it.

4 MS. LAZENBY: Okay.

5 MR. OWENS: 61, the Complainant alleges that
6 the respondent was a subcontractor for another
7 contractor and the general contractor left the job and
8 the respondent was employed to continue doing the
9 electrical work that he was originally doing.
10 Respondent states that. He found that the complainant
11 was impossible to work for and eventually left the job.
12 So I think the contractor had left for the same reasons,
13 but I'm recommending that they fine him not less than
14 \$250.

15 MR. DRIVER: And the fine in this matter is
16 really more for not monitoring his license status more
17 than it is because we do have two contractors on this
18 saying that this person can't be worked with and this
19 person can't be pleased. You get two people in a row,
20 we think the job in that time, kind of start to wonder
21 about it. But they did let their license lapse and they
22 said that, you know, they had a secretary or assistant
23 of some sort that had been siphoning the money away.
24 But at the end of the day it a professional's job to --

25 MR. OWENS: Had it gone beyond the statute

1 of limitations? Do they have a statute of limitations
2 on the license lapsing?

3 MR. DRIVER: They renewed it within the year
4 of the lapse. I assume that would be handled down there
5 or they would have let that be reviewed in the
6 administrative side. So -- but, again, you know -- I
7 think in this case that the fine of \$250 will make them
8 keep closer track of their license status in the future,
9 and I think you've said you would agree with that too.
10 I was just explained where I was coming from with my
11 recommendation.

12 MR. OWENS: Number 62, complainant alleges
13 that the respondent sold him a house for \$189,000 and
14 failed to repair numerous punch list items. I'm
15 recommending that when he sold them this house, I don't
16 know whether the punch list was completed before or
17 after. It may not have been in his contract to complete
18 these items. I'm not sure.

19 MR. DRIVER: Well, and the punch list was
20 completed by other persons after the respondent didn't
21 complete them. And that's what -- a judgment was
22 obtained by the complainant. However, I believe that at
23 the last meeting that the Board expressed that if
24 someone's license had become delinquent, and may prefer
25 to do it only in the case where it's completely

1 unrenewable. Which is not the case yet with this one,
2 that the file be choose to monitor should they get
3 another license.

4 MR. OWENS: Number 63, the respondent -- the
5 complainant alleges that the respondent was unlicensed
6 and entered into a verbal contract. For a price of
7 \$27,000 he was supposed to have completed certain items.

8 MR. DRIVER: \$27,000 plus he got to live
9 rent-free in a second house on this farm. And that was
10 to complete the construction -- oversee the construction
11 of the home.

12 MR. OWENS: He completed the framing. This
13 is what it says.

14 MR. DRIVER: Yeah.

15 MR. OWENS: And all of that was a part of
16 the \$27,000 that he was getting and free rent?

17 MR. DRIVER: Right.

18 MR. OWENS: I'm recommending that they
19 settle this for no less than \$500.

20 MR. DRIVER: How much?

21 MR. OWENS: Not less than \$500.

22 MR. DRIVER: I thought you said half a
23 million. Not sure. That scared me for a second. Okay.

24 MR. OWENS: Number 64, complainant states
25 that a BCA for \$900,000 entered into a cost, plus

1 10 percent contract to be completed within 180 days.
2 Complaint was filed in June 2006 stating that the work
3 was not completed and the work was still not done
4 completely. The original loan was \$140,000 and was
5 later increased to \$175,000. The respondent alleges had
6 drawn \$161,000 and had not yet provided a receipt.
7 Receipts were not provided showing the current cost.
8 They didn't state whether it was certified cost or not.
9 I don't know whether he was supposed to provide the
10 receipts.

11 MR. DRIVER: And I do not know the exact --

12 MR. OWENS: I don't know how they --

13 MR. DRIVER: -- of that contract off-hand.

14 MR. OWENS: I don't know how they had a
15 contract, whether he was to provide all the receipts and
16 then get his ten percent or just what. I don't know how
17 that was compiled.

18 MR. DRIVER: Well, and if you want we can
19 get more information on that one and I will find out
20 exactly how that contract was worded and bring it to the
21 board at the next meeting.

22 MR. OWENS: All right. 65, this is where
23 Complainant alleges that the respondent, a licensed
24 contractor, failed to complete a room addition, valued
25 at \$50,000. And also alleged that the respondent failed

1 to obtain proper permits, failed to pay subcontractors,
2 and failed to carry insurance and pass code inspections.
3 The owner should have asked for certificates of
4 insurance before he was allowed on the job.

5 MR. DRIVER: And the respondent did have
6 insurance. What the owner had seen was where the
7 contractor had got a new policy at a better premium and
8 canceled the existing policy. And all the owner saw --

9 MR. OWENS: Was the old policy.

10 MR. DRIVER: -- was that the old policy had
11 been canceled, not that. And that we were provided a
12 copy that the contractor had been continuously insured
13 throughout this.

14 MR. OWENS: Well, I'm also recommending that
15 this be closed.

16 MS. DEBUSK: Mr. Neal? Would you like for
17 us to come back to you?

18 MR. NEAL: If you could.

19 MS. DEBUSK: Okay. We'll skip to Mr. Brood
20 for 71 through 75.

21 MR. BROOD: Okay. 71, let's see, poor
22 workmanship, misappropriate construction fund, failed to
23 complete construction, respondent is unlicensed during
24 an investigation. Admitted to building several houses
25 in the last few years. At the time he constructed

1 complainant's home he was licensed as an LLE, remained
2 licensed as an LLE. County does not require building
3 permits. Respondent was issued 41,000 citation in May
4 of 2008, which remains unpaid. Formal hearing with
5 authority to settle no less than 1,500. I said and
6 revoke license.

7 MR. DRIVER: All right. Anybody else have
8 any thoughts?

9 (No response.)

10 MR. DRIVER: So 1,500 and revocation of the
11 license of the LLE, which is all they have. Okay.

12 MR. BROOD: I agreed with 72 through 75 as
13 far as your recommendation.

14 MR. DRIVER: All right. The changes to the
15 commercial report, number 81, was changed to close all
16 parties. I believe Mr. Brood stated that he did not
17 think that sound transference problems amounted to gross
18 negligence or incompetence, especially when the drawings
19 in this particular complaint that were provided did not
20 show any insolation in those walls.

21 And number 82, suggested to also do a letter
22 of warning to the BC13 that it appeared may have been
23 working outside of his class.

24 MS. DEBUSK: Okay.

25 MR. DRIVER: Those were the only changes to

1 to the commercial report.

2 MS. DEBUSK: Okay.

3 MR. DRIVER: Go back to -- I believe it was
4 number 42, that I believe Mr. Whittington had a question
5 about earlier. I'm not sure about that number.

6 MR. WHITTINGTON: Yeah, it's 42.

7 MR. DRIVER: Okay. Just give you a small
8 part of the -- here it says, the inspector who went out
9 stated that the home has so many mistakes by the
10 respondent, the respondent has -- let me see, yeah. The
11 inspector said that it was his opinion that the house
12 would be easier to totally rebuild it than to make
13 repairs, that the work on it was that bad.

14 I know there was some question as to why it
15 took so long to file. There doesn't appear to be any
16 sufficient answer to that, quite frankly, in the file.
17 You are talking about the complaint that was filed five
18 years after. However, the inspector that was sent out
19 seemed to think that the work that was done on the home
20 was rather --

21 MR. WHITTINGTON: When did the inspector go
22 out?

23 MR. DRIVER: 2007, so very shortly after the
24 complaint was received.

25 MR. WHITTINGTON: So he was hired in 2002?

1 MR. DRIVER: That's correct.

2 MR. WHITTINGTON: When did they actually
3 start construction? Do you know that?

4 MR. DRIVER: Let's see, it appears the
5 contract was March 2002.

6 MR. WHITTINGTON: Well, if they had a
7 contract then evidently he started shortly after, but he
8 waited five years to make it complete. I don't know
9 what the purpose of the complaint was when he waited
10 that long.

11 MR. DRIVER: It appears -- just for, I
12 guess, some --

13 MR. WHITTINGTON: How did the inspector know
14 --

15 MR. DRIVER: Has to be based on the word of
16 the complainant in that case. You -- I mean, that the
17 work was done. The last billing it appears, done by the
18 respondent in this case, was July 31, '03.

19 MR. WHITTINGTON: Is this contractor still
20 in business?

21 MR. DRIVER: Contractor still has a license.

22 MR. WHITTINGTON: Does he have any other
23 complaints?

24 MR. DRIVER: None that I'm aware of.

25 MS. LAZENBY: We'd have to look it up. Our

1 list is just names. What number?

2 MR. DRIVER: It's number 42 on the report.

3 MR. WHITTINGTON: Just so you know where I'm
4 going with this, I'm not happy with the \$500 if the
5 house is still standing in the shape it was in when he
6 left it. But, you know, the whole point of it is why
7 wait for five years to bring forth a complaint if you
8 got -- it looks to me like six months would have been
9 plenty of enough time to bring forth a complaint.

10 MS. DEBUSK: Well, you don't know. You
11 don't know what the problems were.

12 MS. LAZENBY: Do you have the file on that
13 one?

14 MR. DRIVER: I do. Complaint was filed in
15 April 2007.

16 MR. WHITTINGTON: Now, somebody had to know
17 because the inspector would have had to inspect it prior
18 to, I would think.

19 MS. DEBUSK: Well, we're asking questions
20 we're not going to know until we do a formal. So we
21 just put some ridiculous amount of time on there to get
22 him in here and then figure it all out.

23 MR. DRIVER: What has been suggested again
24 by Ms. Lazenby, and I think it may be a good idea, that
25 perhaps if a board member wants to just get the chance

1 to talk to the inspector on it to see exactly what it
2 was that the inspector saw that was so outrageous and
3 then the board member can think about it. 'Cause, you
4 know --

5 MR. WHITTINGTON: The inspector is just
6 taking the word of the complainant.

7 MR. DRIVER: Right.

8 MR. WHITTINGTON: Then, you know, I'm going
9 to make a bunch -- and we're going to have to drop it
10 considering the age of the --

11 MS. LAZENBY: Well, I think you really need
12 to look at it.

13 MR. WHITTINGTON: Yeah.

14 MS. DEBUSK: So should we look at it?

15 MR. NEAL: Is there a statute of limitations
16 on that?

17 MR. DRIVER: There is no statute of
18 limitations on Board action.

19 MR. OWENS: As a warranty, 20 years later
20 they can come say, we have a problem.

21 MR. DRIVER: That was the only complaint
22 that was filed against this licensee.

23 MR. WHITTINGTON: That's good. But you're
24 saying that if I build a house for a customer, ten years
25 later they can come back and file a complaint against

1 me?

2 MR. DRIVER: They can file it, but it's up
3 to the Board whether they want to take action on it or
4 not. Certainly the Board's job, as you all know, is to
5 protect the public if you look at a complaint that's
6 ten, twenty years old. But is that really protecting
7 the public if you dig someone ten, twenty years after
8 the fact? That's up to you to decide, but we believe
9 there is nothing that prevents a complaint 15 years post
10 facto.

11 MR. NEAL: Something wrong with that; isn't
12 it?

13 MR. TICKLE: Sure is, big time.

14 MR. OWENS: Well. Usually as a years
15 warranty and usually after the contractor fulfilled his
16 year's warranty, they're not supposed to go back because
17 they could have torn it up in the five years and want
18 the try to come back and fix it.

19 MR. WHITTINGTON: Floors can warp in five
20 years if not properly maintained.

21 MR. DRIVER: And certainly time makes it
22 harder to find probable cause as well. You know, it
23 makes it more difficult to say that the problems that
24 arose are any fault of the contractors. If there is
25 foundation issues that pops up 20 years after the fact,

1 well, maybe not in all cases, but generally that's not
2 going to be the --

3 MS. DEBUSK: So let's have Mr. Whittington
4 review the file as the board member and --

5 MR. DRIVER: We'll change that to member
6 review and I'll provide that file to Mr. Whittington.

7 MS. DEBUSK: -- how to handle this
8 particular one.

9 MR. DRIVER: And I believe Mr. Neal's
10 portion of the report is all that's remaining.

11 MS. DEBUSK: Yes. Mr. Neal?

12 MR. NEAL: Okay. Number 66, the only thing
13 I had as a question there. I agree with your
14 recommendation, but couldn't we add \$1,000 fine on there
15 also?

16 MR. DRIVER: We absolutely can.

17 MR. NEAL: I mean, if you decide that he'll
18 take a suspension of six months and you don't want him
19 to pay the fine and let him do that, then that's fine.
20 But I would ask for \$1,000 in addition to that.

21 MR. DRIVER: And you notice in the
22 recommendation that I had that suspension probated on
23 the condition that they're not later found to have
24 violated any laws. If they are found to have violated
25 laws, what I would suggest is that their license be

1 revoked as a condition of that consent order.

2 MR. NEAL: 67, I was fine with. 68, I was
3 fine with. 69, I had a question marked. \$700 fine, how
4 that number was arrived at?

5 MR. DRIVER: Well, there was a suggestion at
6 the last meeting that some members felt that
7 approximately ten percent, as a general rule of the
8 contract amount, would be a decent rule of thumb in
9 cases. That is where that came from. It is not hard
10 and passed. And certainly it's not controlling because
11 of the gravity of the offense has to be taken into
12 account as well and how well it is going to deter the
13 person. But that is how that was arrived at.

14 MR. NEAL: Well, I can kind of the see that
15 on the 7,500, but he had seven others that fall under
16 \$4,000. I don't know. I'd just make that \$1,000.

17 MR. DRIVER: Then Legal will respectfully
18 change it's recommendation to \$1,000.

19 MR. NEAL: Number 70, I was okay with.

20 MR. DRIVER: Madam Chair, I believe that's
21 the whole report. I apologize in the rather unique way
22 it was presented to you today.

23 MS. DEBUSK: Not a problem.

24 MR. NEAL: Madam Chairperson?

25 MS. DEBUSK: Entertain a motion?

1 MR. NEAL: I have a request to go back to
2 the waived applications for one that just appeared.

3 MS. DEBUSK: Okay. Let's settle the
4 residential, the home improvement, the commercial --

5 MR. NEAL: Oh, okay.

6 MS. DEBUSK: -- the approval since we
7 reviewed the reports for approval and then we'll go back
8 to your request.

9 MR. DRIVER: And we still do have the home
10 improvement. That was reviewed. I believe two members
11 of the home improvement subcommittee reviewed that and
12 recommended adoption in it's entirety and Nicole is
13 going to pass that out. If you want to go ahead and
14 handle what's been reviewed, handle Mr. Neal's request
15 and then come back to that once people have had the
16 chance to review it to make sure they agree with the
17 subcommittee's recommendation. Again, up to you.

18 MR. WHITTINGTON: I make a motion that we
19 agree and approve their report.

20 MR. NEAL: Second.

21 MS. DEBUSK: All in favor -- oh.
22 Discussion?

23 (No response.)

24 MS. DEBUSK: All in favor, aye.

25 (Board voted affirmatively.)

1 MR. DEBUSK: Opposed?

2 (No response.)

3 MS. DEBUSK: Motion carries. Now, we need
4 to approve the residential.

5 MR. DRIVER: Residential and commercial
6 policy.

7 MR. TICKLE: Can I ask a question?

8 MS. DEBUSK: Sure.

9 MR. TICKLE: I think the question you asked,
10 if you have a contractor's license. Do you still have
11 to have a home improvement license?

12 MS. LAZENBY: No.

13 MR. DRIVER: No.

14 MR. TICKLE: All right. I didn't think so,
15 but ya'll had me questioning myself here.

16 MS. LAZENBY: But something I'm not real
17 sure of, if you have a contractor's license and you do
18 home improvement, do you fall under the home improvement
19 guidelines for contracting?

20 MR. DRIVER: My opinion would be that you
21 just fall under the contracting law.

22 MS. LAZENBY: Okay.

23 MR. DRIVER: Not under home improvement law
24 because you're not licensed.

25 MS. LAZENBY: Quite different. Your law

1 requires the contracts to be in writing and a lot of the
2 stipulations. So...

3 MR. TICKLE: Thank you.

4 MR. DRIVER: You're excluded. I believe the
5 home improvement law actually excludes licensed
6 contractors, so I don't think that you can go back and
7 apply the requirements of home improvement contracting
8 to a contractor just because they're doing work under
9 25,000 and above 3,000.

10 MS. LAZENBY: Thank you.

11 MR. WHITTINGTON: Madam Chairman, I'd like
12 to make a recommendation -- or what's the word? Motion.
13 I'm lost. That we approve the residential and
14 subcommittee recommendation reports subject to the
15 changes that were made.

16 MR. TICKLE: Second.

17 MS. DEBUSK: Discussion?

18 (No response.)

19 MS. DEBUSK: All in favor, aye.

20 (Board votes affirmatively.)

21 MS. DEBUSK: Opposed?

22 (No response.)

23 MS. DEBUSK: Motion carries.

24 MR. DRIVER: Madam Chair, as we're wrapping
25 this up I do have one other to be handled separate.

1 Case number 2009003821. Mr. Whittington had an informal
2 conference today with this respondent. Legal, as well
3 as Mr. Whittington, have recommended that this
4 respondent who entered bids that appeared to be well in
5 excess of the limited residential license held by the
6 respondent for roofing of multiple houses in projects.
7 The recommendation is that the respondent be allowed six
8 months to get a contractor's license and at that time to
9 provide a copy of that contractor's license as well as
10 to enter into a consent order for \$1,000. If both of
11 those conditions are not met within six months of
12 today's meeting, then it's recommended that voluntary
13 surrender of the license -- of the small residential
14 license be authorized or a formal hearing.

15 MS. DEBUSK: Okay. Do we have motion?

16 MR. TICKLE: Motion.

17 MS. DEBUSK: You have to state your motion.
18 Motion to accept?

19 MR. TICKLE: Motion to accept Mr.
20 Whittington's recommendation as well as counsel's.

21 MR. NEAL: Second.

22 MS. DEBUSK: Discussion?

23 (No response.)

24 MS. DEBUSK: All in favor, aye.

25 (Board votes affirmatively.)

1 MS. DEBUSK: Opposed?

2 (No response.)

3 MS. DEBUSK: Motion carries.

4 MR. DRIVER: That concludes the legal
5 portion. Thank you.

6 MS. DEBUSK: Thank you, Mr. Driver. Ms.
7 Lazenby?

8 MS. LAZENBY: As we discussed at the last
9 meeting, the question come [sic] up and we didn't -- we
10 do not have enough residential board members available
11 and we really wanted them to look at this issue too,
12 it's a land inclusion policy.

13 MR. DRIVER: And I believe -- Mr. Neal, did
14 you want to go ahead and handle that file?

15 MS. LAZENBY: Oh, I'm sorry.

16 MR. NEAL: It's fine with me.

17 MS. DEBUSK: I turn the floor over to Mr.
18 Neal.

19 MR. NEAL: I would just like to go back to
20 the waived applicants area. This is a file that has
21 come forward since we made our motion for approval. And
22 this is a case that I'd looked at based upon a hardship
23 request originally and denied because the hardship
24 request was made by a contractor who was asking to have
25 his license approved. Hardship was not by an owner,

1 architect. Therefore, I denied that request.

2 It has since come to light that this
3 applicant actually offered to engage and engaged in a
4 contract for the Volkswagon office building down in
5 Chattanooga, Tennessee. He indicates that it was a
6 purchase order, that he dealt with CB Richards, who is
7 one of the developers at Volkswagon, and that he was
8 advised that he did not need anything except to get a
9 licensed electrician to do the electrical work in
10 connection with his project.

11 That being said, this came about by one of
12 inspectors receiving complaints to the effect that he
13 had performed this work, and we have a copy of the bid
14 or offering. Dated November 13, 2008, which he
15 submitted to CB Richards or CB Richard Ellis in the
16 amount of \$377,008. In his letter trying to explain he
17 didn't need anything, he said it was just some minor
18 work that was done in the building, other than for this
19 electrical. But the detailed breakdown shows, as an
20 example, \$61,600 for carpeting, \$41,750 to patch
21 existing walls, and a number of other miscellaneous
22 smaller items totaling up to 377.

23 That said, obviously in my opinion, they
24 violated our licensing law. And ordinarily the board
25 has taken one of two different approaches, that being to

1 hold at issuance of the license for the contractor's
2 applicant for a period of six months from the date that
3 the board determined that there was a violation, or in
4 some instances, six months from the date when they
5 entered into the contract. In this case I think it's
6 somewhat simultaneous back to November, because
7 obviously as soon as they started work, they started
8 getting complaints or the inspector did or somebody down
9 there did. But he did finish the job.

10 So that said, it would be my recommendation
11 to the board that this license request be held for a
12 period of six months from November 13th, which is the
13 date that he offered to engaged or offered this
14 contract. And that he be issued a citation for a \$5,000
15 fine in view of the amount of this contract. The file
16 is in order for the BC, small B limit of -- I believe
17 that I can go up to a million five now.

18 MS. LAZENBY: Small commercial? 750.

19 MR. NEAL: It was still 750?

20 MS. LAZENBY: It was 500.

21 MR. NEAL: Okay. He had asked for a million
22 five because he only had a review, but if it's 750 than
23 that's the most he can get. But at the expiration of
24 the six months and upon payment of the \$5,000 fine, that
25 the license be issued for 750 BCB.

1 MR. WHITTINGTON: Second.

2 MR. DRIVER: May I ask a question? Is what
3 you're suggesting, just so I'm clear, that a consent
4 order be authorized and that formal hearing for the
5 \$5,000 --

6 MR. NEAL: If he doesn't pay it.

7 MR. DRIVER: -- civil penalty? But the
8 board does not have citation powers going up to \$5,000.
9 If that is what you want to do on the existing legal
10 file, then what we can is authorize a \$5,000 penalty
11 with authority to go to a formal hearing if the \$5,000
12 is not paid.

13 MR. NEAL: Okay. And obviously if he
14 doesn't he's not going to get his license six months
15 from November the 13th either; right?

16 MR. TICKLE: June 1st is when he'll be able
17 to get a license.

18 MR. DRIVER: Well, I mean, you were saying
19 you're approving the license on the condition of the
20 resolution of this complaint and that is your suggestion
21 for the resolution complaint.

22 MR. NEAL: Sure, that's fine.

23 MR. DRIVER: Okay.

24 MR. NEAL: And there was a second to that
25 amendment?

1 MR. WHITTINGTON: Yes, sir, there was.

2 MS. DEBUSK: Discussion?

3 (No response.)

4 MS. DEBUSK: All in favor, aye.

5 (Board votes affirmatively.)

6 MS. DEBUSK: Opposed?

7 (No response.)

8 MS. DEBUSK: Motion carries.

9 MR. NEAL: Thank you.

10 MS. LAZENBY: Do we need to even discuss the

11 possibility of them doing any other work with

12 Volkswagon? Maybe prohibiting --

13 MR. DRIVER: Only as to that project. I

14 think anything that's part of that project you can't bid

15 --

16 MR. WHITTINGTON: Well, he doesn't have a

17 license.

18 MR. DRIVER: But as of right now he can't

19 bid until he has a license anyway.

20 MS. LAZENBY: But I mean, after next month

21 he will get a license if he pays his \$5,000 fine --

22 MR. WHITTINGTON: By June. May, June,

23 whenever.

24 MR. DRIVER: May.

25 MR. NEAL: If he pays his fine, then yeah.

1 This was an off-site building and if somehow or another
2 he goes over when they finally start -- I can't imagine
3 -- building the plant. I don't know how we could keep
4 him from doing anything over there as long as it's
5 within \$750,000.

6 MS. LAZENBY: That was just an issue that I
7 know won't be coming up.

8 MR. DRIVER: Well, the law does state that
9 you can't rebid on the same project or participate in
10 the same project. And this case I believe Mr. Neal's
11 right, that if their back on the same site -- that's not
12 the same site as this off-site building that the
13 situation has arisen out of.

14 MS. LAZENBY: Okay. The next item that
15 we're discussing is the land inclusion policy. And just
16 for history, our office has always considered it the
17 contract price. So when people call in and say, what
18 monetary limit does it need to cover, we always say it
19 needs to cover that contract price and you do have a ten
20 percent tolerance. And then we've had inquiries of
21 where you should not have to include land. And so
22 that's something we had so Michael, a legal
23 interpretation, and they want the Board to relook at it
24 and make a formal policy of what is considered in a
25 monetary limit.

1 And so I just typed this up and I e-mailed
2 you all a sample of it. And it may be more -- too much
3 information, but I did want to give you as much as I
4 could find on it and so you all could make a decision on
5 how you consider what the monetary limit should cover.
6 And it's behind tab eight.

7 Pretty much I just -- we've always told the
8 contractors that land is considered part of the total
9 cost of project and that if it's a contracted job you
10 would not -- you know, if the contractor owned the land
11 and he built a house on it for somebody, he's not going
12 to have two separate contracts. He's not going to sell
13 the land and charge \$50,000 for it and then build a
14 house and -- we just considered it one project. But
15 spec building, that has been a different issue mainly
16 for enforcement issues. When somebody goes to pull a
17 permit then, you know, it's pretty much the value on the
18 permit of what they would bet. And the past policy --
19 and it's always been sort of split between the board and
20 why a spec builder has exceeded his monetary limit -- if
21 he sells the house for more than his monetary limit. I
22 guess that's an issue we need to look at as well. Can a
23 spec builder sell the house for more than what his
24 monetary limit is.

25 MR. WHITTINGTON: My interpretation of what

1 the spec builder rule is is, no. It's the same as the
2 restricted license.

3 MR. LAZENBY: Okay. Makes sense. I mean,
4 might as well -- and that would probably be easiest
5 to...

6 MR. DRIVER: If I may, the question came out
7 of 62-6-102(3)(a) where it says, contractor is any
8 person who undertakes to -- and I'll skip some language
9 here -- supervise, superintend to oversee or in any
10 matter assume charge of the construction, alteration,
11 repair, improvement, movement, demolition, putting up,
12 tearing down or furnishing labor to install material or
13 equipment for any building, highway, railroad, sewer,
14 grading, et cetera, or any other construction
15 undertaking for which the total cost of the same is
16 \$25,000. So the question is is the land value part of
17 the total cost of the construction, alteration, repair,
18 improvement, movement, et cetera?

19 MR. NEAL: I don't know how we can do that.
20 I mean, you give a guy a contractor's license for half a
21 million dollars, you give him a license to go out and
22 build a house or a building for half a million dollars,
23 or railroad. I mean, we don't have any idea what the
24 land's going to cost.

25 MR. DRIVER: Oh, and I mean --

1 MR. NEAL: Under our BCAR it was always it
2 had to include the cost of the land. But other than
3 that, I mean, you got a million dollar license and you
4 go out and build a million dollar house and you sell it
5 for \$1,800,000, because you're sitting on a quarter of a
6 million piece of property or whatever, or \$100,000 piece
7 of property. It doesn't matter. You ca sell it for
8 whatever you want to.

9 MR. TICKLE: I agree with you. I don't
10 think what you sell it for really has anything to do
11 with it, but what you pull a permit for has to do with
12 it.

13 And in our case -- I'll use what I'm doing.
14 When I pull a permit, I include the cost of my land in
15 it. So my cost of my land plus what I think it's going
16 to be is what I pull a permit for. And I may pull a
17 permit for \$180,000, just like Frank said, but I may
18 sell that house, I hope, for \$230,000 so I can make some
19 money.

20 MS. LAZENBY: Right.

21 MR. TICKLE: So that's typically how we do
22 it.

23 MR. NEAL: And I think you're probably more
24 diligent in permit pulling than a lot of them. Because
25 a lot of them, if they got this half million dollar

1 license, they sure -- and they're building on \$100,000
2 lot, they probably not going to pull a permit for 600.
3 They're going to pull it for 500. And I just think we'd
4 get in a bind trying to figure out what the land cost
5 is.

6 MR. TICKLE: You go a different route if
7 you're doing a custom house. Typically the person who
8 you build a custom house for usually owns the land. So
9 he has the land. And therefore I'm going to build this
10 microphone -- use that for example, I'm going to build
11 this right here for half a million dollars. But then
12 going back to what Frank said, that lot belonged to him.

13 MS. LAZENBY: Right.

14 MR. TICKLE: And that's \$300,000. I don't
15 care about that, I just care about this microphone right
16 here. And that's what I have, my contractor -- I'm
17 saying my license is for whatever this cost is.

18 MS. LAZENBY: So whatever that contract
19 would be?

20 MR. TICKLE: Right.

21 MS. LAZENBY: Right.

22 MR. DRIVER: Well...

23 MR. NEAL: Likewise, we don't get in an
24 argument with what you can sell it for.

25 MS. LAZENBY: Okay.

1 MR. NEAL: I mean, if you can make \$200,000
2 on a \$500,000 house, you know, that's wonderful. You
3 can't, but more power to you if somebody can.

4 MR. BROOD: What the contractor did was
5 construction only. It's not the contract if you're
6 selling the land and the house.

7 MR. DRIVER: I guess that the question is,
8 if someone -- you were saying before, one of you owned
9 the land you built the house on, is it the total cost of
10 building the house or is it the total cost of the land
11 and the house?

12 MS. DEBUSK: The house.

13 MR. TICKLE: Well, in my case I do two
14 things, I do spec building and I do custom homes. My
15 spec building, and my loan is \$42,000 -- we'll use that
16 for example. And then my cost -- let's just say is a
17 150,000. So I'm going to pull a permit for \$192,000.
18 That's what I'm going to pull the permit. I'm adding my
19 cost to the land and cost to the building and I'm
20 hopefully going to sell it for \$230,000.

21 MS. DEBUSK: Do they require you to do that?

22 MR. TICKLE: We do that in Shelby County. I
23 think that's how they're telling us to do it 'cause
24 that's how I have always done it for 30 years.

25 MS. LAZENBY: But we do have several

1 counties that do not issue building permits and then
2 there are several counties that do issue permits. They
3 do it -- I think they just base it on square feet.

4 MR. TICKLE: Exactly.

5 MS. DEBUSK: Is your permit based on percent
6 of the 192 -- to build the house?

7 MR. TICKLE: Uh-huh.

8 MS. DEBUSK: So they include the land to get
9 the higher permit fees?

10 MR. TICKLE: Yeah. They want the money now
11 where we are.

12 MS. DEBUSK: I understand. Isn't that
13 right, Earnest?

14 MR. WHITTINGTON: We pay based on square
15 footage. That fee could be considered higher than what
16 Shelby County pays to off-set the land inclusion.

17 MS. LAZENBY: Okay. I guess maybe could I
18 give an example?

19 MR. TICKLE: Please.

20 MS. LAZENBY: Say for instance, a contractor
21 buys several lots of land and develops them and puts
22 them up. And he puts a house on there -- well, he goes
23 ahead and pulls the permits saying he's going to build
24 spec houses. But before he gets started, he goes ahead
25 and contracts and does a custom on the same lot of land.

1 Because the contract to build this house for this person
2 is 200,000 over his monetary limit.

3 So we would say -- you know, and our office
4 opinion would have been, well, you exceeded your
5 monetary limit because you contracted. And, you know,
6 whenever he contracted with that consumer over his limit
7 to build that house, you know, the monetary limit we
8 looked at for that contract was that figure. And he's
9 sort of, I guess, done a rebuttal saying, well, no,
10 because I had my land figured in there, so I'm not
11 really over my limit.

12 MR. DRIVER: And profit margin too, in that
13 case.

14 MS. LAZENBY: Yes. He saying that -- I
15 guess in this case it was like \$350,000 and I think he
16 had \$100,000 limit. And he says, you know, the profit
17 and the land is the reason why he's over his limit and
18 that should not be part of the total cost of the
19 contract limit.

20 MR. TICKLE: I think he's entirely wrong --

21 MS. LAZENBY: Good.

22 MR. TICKLE: -- on that case.

23 MS. LAZENBY: I mean, it's just...

24 MR. TICKLE: That's the whole point. He
25 just needs to get it up.

1 MS. LAZENBY: Right.

2 MR. WHITTINGTON: The question of the land
3 inclusion policy, are you asking the board to make a
4 motion?

5 MS. LAZENBY: Oh, no. The lawyer --

6 MR. WHITTINGTON: It's an interesting case.

7 MS. LAZENBY: I'm sorry.

8 MS. DEBUSK: We can't globally make a policy
9 or a law because of one individual case.

10 MS. LAZENBY: This happens every day.

11 MR. DRIVER: We're not asking anything about
12 the facts of that case. That's just as a for instance.
13 Whether or not -- and I mean, that turns on -- when you
14 actually get down to it. It was looked at that the land
15 was only worth \$80,000 and the profit margin was
16 \$30,000, he's still over the limit. But I mean, that
17 specific question --

18 MS. DEBUSK: Okay. What are you asking the
19 Board to do today?

20 MS. LAZENBY: I guess something that we can,
21 you know, continue to work in the office, be able to
22 give these contractors guides on what their monetary
23 limit covers. Does it cover the contract price or --

24 MR. DRIVER: The rule just says -- well, I
25 read to you what the law says and the rule just says

1 cost of the project. The question is is the project
2 everything you're selling, which includes the land --
3 there doesn't seem -- and again, I don't mean to speak
4 for the Board, much inception that the profit margin
5 isn't in there, though I could be mistaking about that.
6 Or does cost of the project mean the project is the
7 thing you are putting up or the work you were doing?

8 MR. NEAL: When you pull your permit, you
9 pull your permit including the profit; right?

10 MR. TICKLE: No.

11 MR. NEAL: You don't?

12 MR. TICKLE: No, sir.

13 MR. NEAL: Okay. Then you pull it based on
14 cost?

15 MR. TICKLE: Yes, sir. The cost of my
16 product, the building, and the cost of my land. And
17 it's interesting because two months ago I was looking at
18 a house, people from our area have increased their
19 limits. They have done that because our cost of land
20 has gone up. I know what they've done.

21 And like if you were -- had a limit of
22 \$1,000,000, well in Germantown, which is a suburb that
23 we have, lot's there run anywhere from \$75,000 to
24 \$300,000. So our people are going to buy the lot --
25 let's just say they buy it for \$200,000. They're going

1 to buy the lot for \$200,000 and the rule of thumb used
2 to be your cost of the land and cost of building is five
3 times, so you're talking about \$1,000,000 house that
4 you're going to put up. So you better have \$1,000,000
5 license to build that house. And you want those people
6 to do that. You want those people to be solid when they
7 go into this.

8 We have some houses today that people --
9 doesn't appear they were solid on what happened and we
10 want that. We want the public safe. We want them
11 protected and we want those of us who are in the
12 building business to protect the public and do right.
13 And I think it's important that we do add all that
14 together. And if it does take us to a situation where
15 we need to increase our license, we just have to
16 increase our license to do that.

17 MS. LAZENBY: Right.

18 MR. TICKLE: But I think the land and the
19 product needs to be the issue. If you're able to sell a
20 house and make money, great. But right now, and ya'll
21 know this, a builder can't build a house and make money
22 because we're dealing with foreclosure and we can't
23 match what they have. So we're not being able to deal
24 with that right now. But time will pass and it will
25 happen again.

1 MS. LAZENBY: Yes.

2 MS. DEBUSK: Thank you.

3 MR. BROOD: I've got to leave.

4 MR. TICKLE: Now back here in commercial
5 you're going to have to worry about that.

6 MR. BROOD: We don't buy any land.

7 (Mr. Brood exits.)

8 MR. LAZENBY: But and we always thought of
9 spec building just a totally different area, you know.
10 It's we've just pretty much went by the permit amount
11 because we did not want to limit the contractor. We did
12 not want him to say, you can't sell it for more. You
13 built this house for land and, you know, it only cost so
14 much to build, but you've got a good opportunity to sell
15 it for more. So that's pretty much been the consensus
16 in the past, but I guess --

17 MS. DEBUSK: Can we maybe table it for
18 additional research? I don't think we can make a
19 decision today.

20 MR. TICKLE: I don't think anybody thinks
21 the land ought to be in the ball.

22 MS. DEBUSK: I don't think it should.

23 MR. NEIL: I don't think it should either.

24 MS. DEBUSK: But I'd like to do some
25 research.

1 MS. LAZENBY: Land involvement, spec
2 building, or in general?

3 MS. DEBUSK: I -- just like Frank's -- you
4 have a \$500,000 license, in my mind that means you can
5 build a \$500,000 house.

6 MR. WHITTINGTON: Is that the sale price of
7 the house or construction price of the house?

8 MS. DEBUSK: I think of construction. I
9 never think of sale price. When I -- you know -- if I'm
10 going to bid on a house to build, I would not think sale
11 price.

12 MR. WHITTINGTON: If you're selling the
13 house though -- and this is the way you have to look at
14 it. I'm going to make me a bad example, but take for
15 example I've got a \$500,000 license and I buy a \$400,000
16 lot --

17 MR. TICKLE: To me you can go build a
18 \$500,000 house.

19 MS. DEBUSK: That's within your limit.
20 Right, that's how I see it.

21 MR. TICKLE: Then you can go off and sell
22 it all for a million four.

23 MR. WHITTINGTON: I disagree.

24 MS. DEBUSK: I'd like to research it.

25 MR. WHITTINGTON: I think land should be

1 included and ya'll are saying it should be included.

2 That's the difference.

3 MR. TICKLE: The only problem with the land
4 being included, is we don't know what the land is
5 because they can tell you anything. You're a nice guy
6 that says I've got a lot that's worth \$100,000 and I'm
7 going to build a \$400,000 house. I need a \$500,000
8 permit. But I don't think -- I just don't think that
9 flies in the end. I think that people value lots at --
10 if it's the best lot in the development and all the rest
11 of them sold for \$200,000 down to \$50,000, but here's
12 this one over here that the guy says is worth \$400,000.
13 It's the best lot in the development.

14 MS. DEBUSK: But your development is going
15 to have restrictions on what size and what to build in
16 that house.

17 MR. WHITTINGTON: You still have to meet
18 that appraisal.

19 MR. TICKLE: Right, you still have to meet
20 that appraisal. But the answer to your question is, I
21 know it's hard for this Board to know, but those who are
22 pulling the permit, they know what they paid for that
23 lot and we can track what that land is in Memphis. In
24 other words, we know that if that builder paid \$40,000
25 for a lot or \$30,000 for a lot, because it's recorded.

1 So our people -- when we have to go and pull our
2 permits, they're going to know if that builder's lying
3 and we know that at home.

4 MR. NEAL: Even a developer that's got a
5 peace of land that he's puts 30 lots in?

6 MR. TICKLE: Yeah. It's knowledge we've got
7 it out there. And I'm a developer too, so I've got my
8 subdivision out there and I'm selling all my lots for
9 \$40,000. You come to me, you're going to pay \$40,000
10 for the lot that has a hole in it or the one that's got
11 -- and the ones you sell first have got the best view.
12 But when it's all said and done, if you want to live in
13 that subdivision, you're going to buy the one with a
14 hole in it for the \$40,000. The worst lot you usually
15 end up getting -- as time goes you get your best money
16 for the worst lot when it's all said and done if you
17 want to live in that area.

18 MR. OWENS: I've got a question.

19 MR. TICKLE: Yes, sir.

20 MR. OWENS: If I want to pay \$40,000 for a
21 lot and five years later we build a house and at that
22 time this lot is worth a quarter of million dollars,
23 what happens in a case like that?

24 MR. WHITTINGTON: If an owner builds it,
25 that has nothing --

1 MR. OWENS: No. The owner, he contracted it
2 out to be built.

3 MR. TICKLE: That's okay. That's a custom
4 house. That doesn't make a difference.

5 MS. DEBUSK: What if you --

6 MR. OWENS: The builder didn't own the lot.
7 The contractor built it for the owner. But the value of
8 his lot had gone up.

9 MR. TICKLE: Didn't have anything to do with
10 it.

11 MR. WHITTINGTON: Your builder --

12 MR. TICKLE: Your building doesn't own that
13 lot. You own that lot. I'm the builder. I'm building
14 that lot for you. I don't care what that value is on
15 that lot. That's regardless. I don't care.

16 MS. DEBUSK: But what if you the developer,
17 the lots now cheap, and then you wait and develop them
18 five years from now and they've tripled in cost? What
19 do you base the cost on? What I paid for it or what I'm
20 selling it for now?

21 MR. TICKLE: What I'm selling it for now.
22 We do that all the time. I mean, if I have a
23 subdivision that sits, and hopefully it doesn't, but if
24 my lots increase in value over a period of time, I pull
25 that permit based on my increase on my lot. I do that

1 for two reasons -- I'm going back to what Keith said.
2 I'm doing it for appraisal purposes. I want the highest
3 appraisal I can get, 'cause if the appraiser is going to
4 appraise my property based on what my cost and what the
5 value of my lot is. So the higher my lot is, the better
6 I am in relation to get a good appraisal. The lower the
7 lot, the worst I get on my appraisal.

8 MS. DEBUSK: Okay. I understand.

9 MR. WHITTINGTON: There are checks and
10 balances --

11 MS. DEBUSK: I understand.

12 MR. WHITTINGTON: -- inside the spec home
13 building market that controls that part of it. Our
14 question that we're dealing with is, does the cost of
15 that land -- are we talking about total selling price
16 when we're talking about the contractor's limit which
17 should include land? Which it should.

18 MS. LAZENBY: Uh-huh. Just like, for
19 instance, one of your clients in here, the contractor
20 was exceeding his monetary limit. He had a \$400,000
21 license and he built \$1.5 million home.

22 MR. TICKLE: And that even included the land
23 --

24 MS. LAZENBY: Yeah, that was contract.

25 MR. TICKLE: Right. You can go either way.

1 You --

2 MS. LAZENBY: You can turn around and say,
3 well, the land was worth a million --

4 MR. TICKLE: And get really high up there.
5 But I think I know -- you want to get some kind of
6 definition where everybody in on an even playing field.
7 And it sounds to me like the way we do things are
8 different than Pulaski County or somebody else does
9 something.

10 MS. LAZENBY: Right.

11 MR. TICKLE: So being that as it may, we're
12 going to go back to what Cindi said, just make it what
13 the cost is rather than -- that way you'll be -- and
14 then Frank said the same thing, had to be your even
15 playing field. If this thing cost \$500,000 then my
16 limit is \$500,000 and you'll get what I paid for the
17 land.

18 MS. DEBUSK: But I would like to table it
19 and do additional research and speak with some --
20 because there's no way we can make a decision about
21 this.

22 MS. LAZENBY: Right. There's no way you can
23 find anybody exceeding their monetary limit if you don't
24 define what the monetary limit is. We need to know,
25 should their monetary limit cover their total contract.

1 That's all we really want to know.

2 MS. DEBUSK: Okay.

3 MR. TICKLE: A contractor is going to want
4 what your price is.

5 MS. DEBUSK: Oh, I understand.

6 MR. TICKLE: A county is going to want what
7 I said.

8 MS. DEBUSK: Oh, I understand.

9 MS. LAZENBY: And the government --

10 MR. TICKLE: And the government doesn't
11 really care.

12 MS. LAZENBY: -- an answer so we can guide
13 --

14 MR. NEAL: Well, how about until the next
15 board meeting we go along with Cindi's recommendation
16 and you can check. But I think maybe Reese will be here
17 at the next board meeting and that will give us a
18 Davidson County opinion from a home builder, but in the
19 mean time could we tell Carolyn that currently the
20 board's position is, it is whatever your license is.
21 Does not include the cost of the land or your profit.

22 MR. TICKLE: Right.

23 MS. LAZENBY: No, we can't do that.

24 MS. DEBUSK: No.

25 MR. DRIVER: I would think you would need a

1 motion to do that.

2 MS. DEBUSK: No. I don't think we need to
3 do a motion. This is all for discussion.

4 MR. TICKLE: We just need to leave
5 everything the way it is until we meet in two months.

6 MR. DRIVER: Right.

7 MS. DEBUSK: We're going to postpone this.

8 MR. TICKLE: In two months we'll make a
9 decision how ya'll base everything.

10 MS. DEBUSK: And this does not require a
11 motion to table this to the next board meeting?

12 MS. LAZENBY: No.

13 MR. TICKLE: Another question, I guess it's
14 in this what we're talking about. I was confused about
15 this sales tax. Are we trying to say that if you build
16 a spec house you've got to pay taxes on that house?

17 MS. LAZENBY: I don't know anything about
18 taxes.

19 MR. TICKLE: Payment of sales tax on this.
20 Expected developers have materials comprised on the job
21 site pay sales tax on the job site. Previous sales tax
22 may be determined by the vendor's location. We're not
23 trying to --

24 MS. DEBUSK: Where did this came from?

25 MR. DRIVER: That was, I believe Carolyn

1 drafted a proposed policy. This has not --

2 MS. LAZENBY: Oh, it's in here.

3 MR. DRIVER: -- this has not been adopted
4 yet. This was something Carolyn --

5 MS. LAZENBY: I've got too much in here.
6 This is how another state has it.

7 MR. TICKLE: Okay. I just want to make sure
8 we're not double dipping. And I was really concerned
9 about this because we don't make that kind of --

10 MR. DRIVER: This is not the current policy
11 of the board. This is something Carolyn did as an, if
12 the Board wanted to do a policy it might look like this.

13 MR. TICKLE: Okay.

14 MR. DRIVER: Filling in these blanks and
15 that sort of thing. That is all that it is, I believe.

16 MR. TICKLE: I read my homework and I wanted
17 to ask the teacher, but she wasn't there.

18 MS. LAZENBY: I'm sorry.

19 MR. WHITTINGTON: I'd like to make a motion
20 that we table the discussion of monetary limits until
21 the next regular scheduled board meeting.

22 MS. LAZENBY: Okay.

23 MR. TICKLE: Second.

24 MS. DEBUSK: Discussion?

25 (No response.)

1 MS. DEBUSK: We don't need a motion to do
2 that.

3 MR. WHITTINGTON: But we've got a motion and
4 a second.

5 MS. DEBUSK: Discussion?

6 MR. TICKLE: We're happy.

7 MS. DEBUSK: All in favor, aye.

8 (Board votes affirmatively.)

9 MS. DEBUSK: Opposed?

10 (No response.)

11 MS. DEBUSK: Motion carries. Worker's comp.

12 MS. LAZENBY: Okay. I just really wanted to
13 bring this to you all's attention that the law is
14 changing in December and we will have three months
15 before those renewals go out we'll have to change our
16 renewal. And I just wanted to get ya'lls incite, if
17 that's okay, that we just ask a question, an affidavit
18 on the renewal that, you know, as long as they do not
19 have any employees and they only contract directly with
20 the owner, never acts as a subcontractor, that would be
21 the only time they'll be exempt when they're a sole
22 proprietor in a partnership.

23 MS. DEBUSK: Why did this happen? Who did
24 this?

25 MS. LAZENBY: I don't know.

1 MR. NEAL: They change it every time they
2 meet.

3 MS. DEBUSK: Who's they?

4 MR. NEAL: The legislature.

5 MS. DEBUSK: But someone had to have
6 introduced.

7 MS. LAZENBY: There was a worker's comp
8 committee.

9 MS. DEBUSK: So just to get more money in
10 the worker's comp general fund.

11 MR. TICKLE: It goes back to what -- it does
12 help everybody out to have their workman's comp
13 interest.

14 MS. DEBUSK: Definitely.

15 MR. WHITTINGTON: The only way you as --
16 see, if you were a corporation, your officers don't have
17 to have the workman's comp. But if you're a partnership
18 or something like that --

19 MR. NEAL: That's the current law. The law
20 changes in December.

21 MS. LAZENBY: Yeah. Corporations in
22 December will all have to have them.

23 MR. NEAL: Workers comp, the only still
24 weird thing is as ya'll look at these applications as
25 they come in. Nine out of ten of them will check zero

1 employees. You know, nine out of ten of them can't work
2 without any employees.

3 MR. TICKLE: Without any help.

4 MR. NEAL: So we have no follow-up basis to
5 make sure those people have workers comp.

6 MS. DEBUSK: But unless you're a sole
7 proprietor or partnership --

8 MR. NEAL: Right. This is better. In other
9 words, it's getting the corporation and LLC's now as of
10 December, but it's still --

11 MS. LAZENBY: Yeah. I mean, currently a
12 corporation or an LLC can check they have no employees,
13 but they won't be allowed to in December.

14 MS. DEBUSK: Well, and the reason you're an
15 LLC is to protect yourself personally. So now we're
16 going to ask them to be a sole proprietor which is going
17 to -- if they're ever sued. It doesn't mean because
18 you're an LLC with all these employees. You can be a
19 sole proprietor, which is what they recommend you to do.
20 And now --

21 MR. NEAL: It doesn't effect anything
22 legally. It only says you have to have worker's comp.

23 MS. DEBUSK: Right. But if you're an LLC
24 previously and you had zero employees, you didn't have
25 to have worker's comp.

1 MR. NEAL: That's right.

2 MS. DEBUSK: But I'm saying that accountants
3 recommends people to be LLC's for personal protection.

4 MR. NEAL: Well, you can still have that.

5 MS. DEBUSK: No. Because now you have to
6 have worker's comp and you can't have zero employees.

7 MR. NEAL: Well, that's just worker's comp.
8 You still have to protect third parties.

9 MS. DEBUSK: But now you're going to be a
10 sole proprietor.

11 MR. NEAL: No. It doesn't make you a sole
12 proprietor.

13 MR. DRIVER: No.

14 MR. NEAL: It only says you are an employee
15 of an LLC, which you are, and they are interpreting the
16 law correctly.

17 MS. DEBUSK: But if you're a sole proprietor
18 you do not have to have worker's comp?

19 MR. DRIVER: But if you were structured as
20 an LLC you were not a sole proprietor. A sole
21 proprietor is someone that owns the business by
22 themselves outside of any corporate structure.

23 MR. TICKLE: That's right.

24 MS. DEBUSK: Okay. But I disagree with
25 that, just based on what an accountant said, to be an

1 LLC, not a sole proprietor, to protect yourself from
2 lawsuits or from being personally sued.

3 MR. DRIVER: And I'm not suggesting
4 otherwise. I'm saying one person can own the entirety
5 of the stock of an LLC. But in that case the LLC is who
6 is doing the business, not a sole proprietor.

7 MS. DEBUSK: Right. And now you have to
8 have worker's comp.

9 MR. DRIVER: Yes.

10 MS. DEBUSK: Okay.

11 MR. TICKLE: But if you're a corporation,
12 your officers in the corporation do not have to have
13 worker's --

14 MS. DEBUSK: You will now.

15 MR. WHITTINGTON: You do now after December.

16 MS. DEBUSK: December 31st.

17 MR. TICKLE: Thought it was if you were a
18 corporation your officers don't have to have workman's
19 comp.

20 MS. DEBUSK: Right, currently.

21 MR. NEAL: Currently you can elect not to be
22 covered under worker's comp.

23 MR. TICKLE: Uh-huh.

24 MR. NEAL: Come December 31st, corporation
25 officers are just like any other employee. Consequently

1 you're going to have to get worker's comp.

2 MS. DEBUSK: Although they're not in the
3 field, they're sitting behind a desk, as of December 31,
4 everyone has got to have worker's comp.

5 MR. TICKLE: Everybody is going to get
6 fired. Nobody going to be an employee. So anybody
7 affiliated with your company is going to have to get
8 worker's comp.

9 MR. WHITTINGTON: That's the best -- they're
10 going to get their worker's comp out of everybody now.

11 MR. TICKLE: All right.

12 MR. NEAL: Only exception will be sole
13 proprietors.

14 MS. DEBUSK: Okay. Robert's rules.

15 MS. LAZENBY: This was a discussion that was
16 tabled from last meeting also. And Michael researched
17 this, and I do have some copies of the law from Cindi's
18 book that you all can use.

19 MR. NEAL: But that book is for dummies.
20 That's what the book says.

21 MS. LAZENBY: Exactly.

22 MR. NEAL: That's why you're passing it out
23 to all of us?

24 MS. LAZENBY: No, no.

25 MS. DEBUSK: Robert's rules of order

1 recommended that book.

2 MR. LAZENBY: And it goes along with what
3 Michael researched. So the chair is allowed to vote in
4 a ballet so long as the vote enhanced before count
5 begins. Otherwise the chair may only vote when the
6 chair's vote could change the outcome of the vote. And
7 Mr. Neal, if you'll look at the rules you will be owing
8 Mr. Brood 100--

9 MR. NEAL: I'm glad you didn't bring that up
10 while he was here.

11 MR. WHITTINGTON: I'll take it back to him.

12 MR. NEAL: I'll catch him next time.

13 MS. DEBUSK: So does anyone have any
14 questions about when the chair votes and then when chair
15 does not vote?

16 MR. NEAL: Well, if you're the chair, you
17 can vote whenever you want to. Every time.

18 MS. DEBUSK: Thank you.

19 MS. LAZENBY: When does the executive
20 director get to vote?

21 MS. DEBUSK: Next. Meeting.

22 MS. LAZENBY: Can I vote next meeting?

23 MS. DEBUSK: Let's see, what else? Fees.
24 Do we have anything on fees?

25 MS. LAZENBY: This is something that Keith

1 brought up and it's a very good suggestion and it was
2 something we also talked about with assistant
3 commissioner a while back when our fees were delinquent.
4 But all this work that you all do on the provision
5 files, it's done without a fee. Contractors do not pay
6 a fee to have a revision done. They can get an
7 increase, they can get an add class, a name change for
8 free. So most other states do charge fees and that's
9 something that you all may want to look at and we can do
10 rules to change that.

11 MR. WHITTINGTON: I have a simple motion
12 that I'd like to make that will cover that since I
13 brought it up.

14 MS. LAZENBY: Okay.

15 MR. WHITTINGTON: In any license activity
16 request from the board, I would like to make a motion
17 that the board or the state charge a fee of \$100 per
18 action upon that license, other than renewal of the
19 license and issuance of the license. So I might want to
20 say just stop issuance and renewal.

21 MR. NEAL: Since those fees are already set.

22 MR. WHITTINGTON: Since those fees are
23 already set.

24 MR. DRIVER: And that would require a rule
25 change.

1 MR. WHITTINGTON: Meaning we have to have a
2 rule making hearing?

3 MR. DRIVER: Correct.

4 MR. WHITTINGTON: Meaning we've got to give
5 three months notice?

6 MR. DRIVER: Yup.

7 MR. WHITTINGTON: That's good. Let's get
8 the ball rolling.

9 MR. DRIVER: And I just want to make sure
10 your motion --

11 MR. WHITTINGTON: My motion --

12 MR. DRIVER: -- your motion is \$100 for any
13 action, essentially, that doesn't already have a fee
14 prescribed or anything that's not --

15 MR. WHITTINGTON: Anything other than
16 issuance and renewal, because I think right now we've
17 got one fee of \$75.

18 MS. DEBUSK: There --

19 MR. WHITTINGTON: There is one form that
20 we've got that charges a \$75 fee. I saw it.

21 MS. LAZENBY: Oh, it's the LLP, the plumber,
22 and I think that's set by statute.

23 MR. WHITTINGTON: No. It was one of the
24 revisions or mode changes or class, I think.

25 MS. LAZENBY: They may have sent in --

1 MR. NEAL: What do you mean when you say
2 anything that doesn't have a pre-prescribed fee?

3 MR. WHITTINGTON: Any activity other than
4 issuance or renewal should be \$100.

5 MS. LAZENBY: Probably the best way to do it
6 would be prescribing a fee since, like, we have
7 requirements that are \$50 -- \$25 each year.

8 MR. WHITTINGTON: \$25?

9 MR. NEAL: Just anything that doesn't
10 already have a prescribed set will cost \$100. Second.

11 MS. DEBUSK: Discussion?

12 MS. LAZENBY: Well, I think -- is that
13 everything?

14 MS. DEBUSK: Well -- okay. All in favor,
15 aye.

16 (Board votes affirmatively.)

17 MS. DEBUSK: Opposed?

18 (No response.)

19 MS. DEBUSK: Motion carries.

20 MS. LAZENBY: Okay. Thank you all so much
21 for coming in and all your hard work.

22 MS. DEBUSK: That's the last item on the
23 agenda. Anything to go over before this board?

24 MR. NEAL: Well, I thought you were going to
25 make a motion that all these waived applications that

1 the board members reviewed, \$100 for each one of those.

2 MR. WHITTINGTON: I knew that would never
3 pass.

4 MS. DEBUSK: I'll entertain a motion to
5 adjourn.

6 MR. WHITTINGTON: So moved.

7 MR. NEAL: Second.

8 MS. DEBUSK: Motion carries.

9 (End of proceedings.)

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1 REPORTER'S CERTIFICATE

2

3 STATE OF TENNESSEE

4 COUNTY OF DAVIDSON

5

6 I, LINDA J. FINE,
7 Court Reporter, with offices in Nashville, Tennessee,
8 hereby certify that I reported the foregoing proceedings
9 by machine shorthand to the best of my skills and
10 abilities, and thereafter the same was reduced to
11 typewritten form by me.

12 I further certify that
13 I am not related to any of the parties named herein, nor
14 their counsel, and have no interest, financial or
15 otherwise, in the outcome of the proceedings.

16

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18

19

20

21

22 _____
23 LINDA FINE
24 Notary Public
25 State of Tennessee

My Commission Expires: 3/7/2011

25